

BEFORE THE MONTANA STATE AUDITOR  
AS EX-OFFICIO COMMISSIONER OF INSURANCE

IN THE MATTER OF:  
VIOLENT CRIME CONTROL AND  
LAW ENFORCEMENT ACT OF 1994;  
18 USC §§ 1033, 1034.

) **REVISED** ORDER SETTING PROCEDURE  
) FOR PERSONS SEEKING WRITTEN  
) CONSENT TO WORK IN THE BUSINESS  
) OF INSURANCE BECAUSE OF A  
) CONVICTION INVOLVING BREACH  
) OF TRUST, DISHONESTY, OR 18 U.S.C. §  
) 1033

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The Montana State Auditor, in his capacity as Commissioner of Insurance (hereafter  
"Commissioner") in recognition of his duties pursuant to § 33-1-311 (3), MCA, and pursuant to  
the requirements of § 33-1-314, MCA makes the following:

**FINDINGS**

1. The United States Congress enacted the Violent Crime Control and Law Enforcement Act of 1994 (hereafter "Act"), including §§ 1033 and 1034 of the act as codified at Title 18 of the United States Code. Said Act has legal implications for the state of Montana and persons who engage in the business of insurance whose activities affect interstate commerce or who participate in such business.
2. One purpose of the Act is to protect interstate commerce and consumers from persons who have been convicted of felonies involving breach of trust, dishonesty, or an offense otherwise described in 18 U.S.C. § 1033 where those persons have not been sufficiently rehabilitated.
3. The Commissioner must act on requests from persons seeking relief from the implications of the Act.

4. The Commissioner seeks to create a uniform process for persons seeking relief from the implications of the Act and that also is as uniform as possible with the recommendations from the National Association of Insurance Commissioners (hereafter "NAIC").

WHEREFORE the Commissioner makes the following:

### CONCLUSIONS

1. The Commissioner has jurisdiction to issue written consent allowing rehabilitated persons to begin working or continue working in the insurance industry where interstate commerce is affected pursuant to 18 USC §§ 1033, 1034 (the Act).
2. The Commissioner may initiate any process necessary to address the requirements of the Act and other relevant state and federal law.
3. The Commissioner may rely on information and concepts set forth in the NAIC guidelines for state insurance regulators addressing the requirements of the Act.
4. The Commissioner has personal jurisdiction to consider requests from persons who are desirous of engaging or participating in the business of insurance, whose activities would affect interstate commerce, and who are prohibited from working in the insurance industry because of the Act by virtue of one of the following sets of facts:
  - a. the person has been convicted of any criminal felony involving dishonesty or a breach of trust; or
  - b. the person has been convicted of an offense listed under § 1033 of the Act.
5. The Commissioner has subject matter jurisdiction to consider requests for relief in the following factual situations:

- a. The person will engage in and maintain an employer-employee, owner or director-type relationship with an insurance company domiciled within the exterior boundaries of the state of Montana, wherein the person will not need subsequent licensure as a resident by the Commissioner; or
- b. The person is a legal resident of the state of Montana and will also simultaneously need a "resident license," including producers, consultants, administrators and adjusters, to perform insurance activities; or
- c. A person does not meet the criteria for either (a) or (b) above, but the person's insurance activities will be substantially performed as an "agent-servant" or "independent contractor" for either an insurance company domiciled within the state of Montana, or an entity or person who possesses a "resident license" granted by the Commissioner.

Based on the foregoing Findings and Conclusions the Commissioner hereby issues the following:

### **ORDER**

The Commissioner hereby orders and relies on the following process to address the requirements of the Act:

1. Persons prohibited from working in the insurance industry because of the Act (hereafter these persons are identified as "Applicants") must file a preliminary application with the Commissioner that includes the following information:
  - a. a description of the insurance activities performed by the Applicant or proposed to be performed by the Applicant;

- b. an affidavit from the insurer's insurance company or business entity president (or the president's lawfully delegated designee) that supports the Applicant's description of the Applicant's work or proposed work, and that indicates satisfactory compliance by the Applicant with job-related requirements, including some discussion of any relevant complaints lodged against the Applicant and an indication of the length or term of Applicant's employment;
- c. a statement indicating the Applicant's place and date of birth. If Applicant was not born in the United States, the statement should indicate:
  - i. the time of first entry and port of entry;
  - ii. whether the Applicant is a citizen of the United States;
  - iii. if naturalized, when, where and how the Applicant became naturalized;
  - iv. the Certificate of Naturalization number; and
  - v. whether any citizenship rights were revoked as a result of conviction or imprisonment, and if so the name of the court and date of judgment, and the extent to which such rights have been restored;
- d. a statement listing Applicant's educational background, including names and addresses of all schools attended;
- e. a description of Applicant's relevant employment and business association history, including military service;
- f. a section which lists the Applicant's name, address, social security number and any aliases or other names or social security numbers used by the Applicant, including dates of use of other names and/or social security numbers;

- g. a listing containing the complete name and location of any insurer, or business entity, for whom insurance activities will be performed by the Applicant;
- h. a description of the nature, duties and activities of the office or position for which the issuance of written consent is sought;
- i. any written agreements or contracts to be entered into with the insurer or business entity;
- j. if different from "e.," a description of the Applicant's present employment or business activities, including office or offices held and duties;
- k. a list of names and addresses of all insurers for which Applicant has advised, represented, or in any manner worked for concerning the writing of insurance or the reinsuring of risks by an insurer including all acts necessary or incidental to such writing of reinsuring. List the activities of persons who act as, or are officers, directors, agents, or employees of insurers who are other persons authorized to act on behalf of such persons, together with a description of the activities performed for each such insurer;
- l. a statement as to whether any relatives by blood or marriage who are within the second degree of kinship are currently serving in any capacity with any insurer;
- m. a statement of the details regarding all felony convictions:
  - i. that appear to prohibit the Applicant from engaging in the business of insurance as defined in the Act, including, but not limited to, the date of the offense or offenses which led to the Applicant becoming a prohibited person, the age of the applicant on such date, and the time that has since elapsed;

- ii. that the Applicant does not, for purposes of this request, contest the validity of any felony conviction upon which the request would be granted;
- iii. the bearing, if any, the criminal offense or offenses will have on the Applicant's fitness or ability to perform one or more of the duties or activities or responsibilities presented in the application;
- iv. whether the Applicant has made full payment of outstanding court costs, supervision, fees, fines and restitution concerning the offense or offenses;
- v. whether the applicant has received a full pardon or other type of pardon to the offense or offenses;
- vi. whether there exists any evidence of mitigating or extenuating circumstances surrounding the Applicant's commission of the offense or offenses;
- v. what evidence exists of the Applicant's rehabilitation;
- vi. a full explanation of the reasons or grounds relied upon to establish that the Applicant's insurance activities for which written consent is sought will not be contrary to the intent and purposes of the Act, and thus will not pose a risk or threat to insurance consumers or the insurers.
- n. a list of any professional licenses held at the present time or at any time in the past relating to the business of insurance, including but not limited to, being a producer, third-party administrator, consultant or adjuster;
- o. a statement regarding whether the Applicant has ever had a consumer complaint, administrative or other legal proceeding filed against the Applicant regarding the

Applicant's insurance activities and whether as a result the Applicant has ever had a license as described in (n) above suspended, revoked or otherwise administratively sanctioned;

p. a statement regarding whether the Applicant has ever applied for written consent from any other commissioner of insurance, and if so, the outcome in that proceeding;

q. Each application should be accompanied by five notarized affidavits addressed to the Commissioner attesting to the character and reputation of the Applicant. The character endorsements should indicate the length of time the writer has known the Applicant and describe the Applicant's character traits as they relate to the employment, position or activities for which written consent is sought. The reputation endorsement should address if the reputation was formed in the community, a certain business, or elsewhere.

2. Once jurisdiction is established pursuant to items (4) and (5) of the Conclusions above, the Commissioner must consider the merits of an application, including, but not limited to, the following:

- a. whether the Applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and
- b. whether issuance of written consent to the Applicant is consistent with the public interest, federal and state law and any applicable court orders.

3. In the event the Commissioner grants consent, a written order will issue to that effect. The written order granting consent shall do the following:

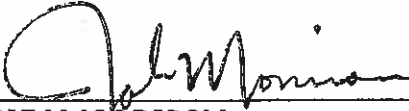
- a. specifically refer to 18 USC Section § 1033 (e) (2);
- b. specifically indicate how personal and subject matter jurisdiction is acquired;

- c. specifically consider and address the following items:
    - i. the legitimate interest of the state of Montana or the insurer for whom the activities would be performed in protecting property, and the safety and welfare of specific individuals, business, and the general public;
    - ii. whether the Applicant or someone else on the Applicant's behalf has made a materially false or misleading statement or omission in the application process;
    - iii. the nature and circumstances surrounding and the seriousness of the offense or offenses which are the subject of the order;
    - iv. whether the Applicant has been charged with or indicted for and convicted of multiple felony offenses;
    - v. what specific evidence exists that the Applicant has been rehabilitated;
    - vi. whether any or all NAIC members were timely notified of the Applicant's request for written consent, together with any relevant information regarding the fitness of the Applicant received from other NAIC members;
  - d. state that it is conditioned upon the truth and veracity of facts disclosed by the Applicant in the application; and
  - e. specifically identify any other restrictions or conditions to the consent.
4. In the event the Commissioner denies consent, a written order will issue to that effect and such order shall contain the following:
- a. a specific reference for Applicants to §§ 33-1-701 and 711, MCA as the appeal processes for the denial; and
  - b. a specific reference to 18 U.S.C. § 1033(e)(2).



5. This order supersedes the order dated January 16, 2004.

SO ORDERED this 20 day of May, 2008.



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JOHN MORRISON  
State Auditor and Ex-officio Commissioner of Insurance